

APPEAL NO. 010543

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 13, 2001. The hearing officer determined that the appellant (claimant) had not sustained a compensable injury on _____, and that the claimant did not have disability.

The claimant appealed, contending that "the evidence proves" that he sustained a back and left shoulder injury on _____ and had disability due to that injury. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant was apparently employed as a concrete finisher by a construction company. The claimant alleges a back (and shoulder) injury on _____. The circumstances of this alleged injury are in dispute, as is whether or not the claimant was even working on _____; whether or not the employer's safety representative, BG, took him to a doctor; whether or not the claimant was released to light duty; and whether or not the claimant continued to work until July 31, 1997, when he was terminated for failing to show up at work. Medical records of the (clinic) of July 28, 1997, indicated some complaints of low back pain and itching. The claimant was diagnosed with "Lsp [presumably lumbar sprain]" and "Vitilligo [vitiligo is spelled, and misspelled, in various ways throughout the record]." In his appeal, the claimant states that his "vitilligo is not due to this date of injury." The claimant was taken off work, apparently as of July 28, 1997. Other medical records of 1998 and 1999 appear to principally address the vitiligo. An initial medical report of a visit on November 13, 2000, diagnoses chronic low back pain and chronic neck pain.

The hearing officer comments:

there was a good deal of conflict in the evidence at the hearing, both between the employer representative, [BG], and the Claimant, and in regard to the evidence provided by Claimant himself.

In short, the cause and the date of occurrence of the alleged injury, and the beginning of the period of disability, if any, were never established to any degree of certainty.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing

officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge